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Docket No. RSW920010058US1 *PATENT*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Chastain et al.** §

Serial No. **09/900,551** §

Filed: **July 6, 2001** §

For: **Method and System for Automated Collaboration Using Electronic Book Highlights and Notations** §

§ Group Art Unit: **2172**

§ Examiner: **Ly, Anh**

Commissioner for Patents
P.O. Box 1450
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ATTENTION: Board of Patent Appeals and Interferences

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By: Rebecca Clayton
Rebecca Clayton

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APPELLANT'S BRIEF (37 C.F.R. 1.192)

This brief is in furtherance of the Notice of Appeal, filed in this case on April 9, 2004.

The fees required under § 1.17(c), and any required petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief is transmitted in triplicate. (37 C.F.R. 1.192(a))

REAL PARTIES IN INTEREST

The real party in interest in this appeal is the following party: International Business Machines Corporation.

RELATED APPEALS AND INTERFERENCES

With respect to other appeals or interference's that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such appeals or interference's.

STATUS OF CLAIMS

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 1-14 and 16-27

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims canceled: 15
2. Claims withdrawn from consideration but not canceled: none
3. Claims pending: 1-14 and 16-27
4. Claims allowed: none
5. Claims rejected: 1-14 and 16-27

C. CLAIMS ON APPEAL

The claims on appeal are: 1-14 and 16-27

STATUS OF AMENDMENTS

No amendment after final was filed in this case.

SUMMARY OF INVENTION

An electronic book or e-book technique, and in particular a technique for automated collaboration using electronic book passages and notations. A user can highlight passages and/or notes, which are tagged and automatically sent to each electronic book of a designated set of

recipients. The designated recipients can enter search criteria so that the highlighted passages and/or notes are displayed in their electronic book based on the specified criteria.

Figure 4 depicts a block diagram of a data processing system illustrating a collaboration process for electronic books or e-books (Specification page 11, lines 26-28). A user can highlight or select passages 424 and 428 within an e-book which are to be sent (Specification page 11, line 30 – page 12, line 1). A note, such as note 429, may also be associated with the selected/highlighted passage and also transmitted (Specification page 12, lines 1-4). The primary user may designate a set of recipients through the use of a collaboration process 430 by selecting other e-book users or groups of e-book users from a user list 440 (Specification page 12, lines 17-21. The selected/highlighted passages are transmitted through a communication link that is used to download book content to the e-book (Specification page 12, lines 27-29), thus allowing transmission of selected/highlighted passages to a user's e-book. Figure 6 is a representative example of adding a note to selected/highlighted passages of an e-book. Figure 6 shows a diagram of an electronic book with a pop-up window to add a note to a selected/highlighted passage (Specification page 13, lines 10-25). Figure 9 shows a flowchart of the process of generating a note for collaboration. A user has the ability to highlight passages within an e-book and to create a note associated with the passage (Specification page 13, lines 17-21). A determination is made as to whether the passage is already within an existing note, and if so, then that existing note is opened for append. Otherwise, a new note is opened for the highlighted passage (Specification page 15, lines 23-29). Figure 11 shows a flowchart of the process of sending highlighted passages and/or notes. Collaborated highlighted passages and/or notes from other users may be downloaded to the current user's e-book (Specification page 16, line 28 – page 17, line 16). The passages and notes may be sorted and grouped, thereby allowing a user to order the highlight text from a particular user first (Specification page 17, lines 16-25).

ISSUES

A. Whether Claims 1-2, 9-12, 23 and 26-27 were properly rejected by the Examiner under 35 U.S.C. 103 as being unpatentable over US Patent No. 5,835,758 issued to Nochur et al. (hereinafter Nochur) in view of US Patent No. 5,247,661 issued to Hager et al. (hereinafter Hager).

B. Whether Claims 3-8, 13-14, 16-22 and 24-25 were properly rejected by the Examiner under 35 U.S.C. 103 as being unpatentable over US Patent No. 5,835,758 issued to Nochur et al. (hereinafter Nochur) in view of US Patent No. 5,247,661 issued to Hager et al. (hereinafter Hager) and further in view of Patent No. 5,893,132 issued to Hoffman et al. (hereinafter Huffman).

GROUPING OF CLAIMS

The claims do not stand or fall together, and Appellants consider the following groups of claims to be separately patentable:

Group I: Claims 1-13, 23, 24, 26, 27
Group II: Claims 14, 16-20 and 22
Group III: Claim 21
Group IV: Claim 25

Appellants consider the claims of Group II to be separately patentable by reciting steps of sorting of selected text and displaying of sorted text for subsequent user processing.

Appellants consider the claim of Group III to be separately patentable by reciting that selection criteria (used by the sorting step) is received with the selected text.

Appellants consider the claim of Group IV to be separately patentable by reciting a receiving means for receiving selected text from at least one remote electronic book and sorting means for sorting the selected text.

ARGUMENT

Appellants will show below that the cited references have been improperly combined using hindsight analysis, and even when improperly combined there are still missing claimed elements not taught or suggested by the cited references. In addition, the Examiner has failed to properly establish a prima facie showing of obviousness.

As stated by the Federal Circuit, "virtually all [inventions] are combinations of old elements." *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 698, 218 USPQ 865, 870 (Fed. Cir. 1983); *see also Richdel, Inc. v. Sunspool Corp.*, 714 F.2d 1573, 1579-80, 219 USPQ 8, 12 (Fed. Cir. 1983) ("Most, if not all, inventions are combinations and mostly of old elements."). Therefore an examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be "an illogical and inappropriate process by which to determine patentability." *Sensonics, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570, 38 USPQ2d 1551, 1554 (Fed. Cir. 1996). To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. *In re Rouffet*, 149 F.3d 1350, 47 USPQ 2d 1453 (Fed. Cir. 1998). "[w]hen determining the patentability of a claimed invention which combines two known elements, 'the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination.'" *See In re Beattie*, 974 F.2d 1309, 1311-12, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992) (quoting *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1462, 221 USPQ 481, 488 (Fed. Cir. 1984)). In rejecting Claim 1, the Examiner states it would have been obvious to a person of ordinary skill in the art to combine the teachings of Nochur with the teachings of Hager so as to obtain a method for distributed (sic) the selected text document with desired recipient from a list of recipients stored in the database, as this combination would have

made a method in a data processing system being able to create or select a text document in order for automatically sending or forwarding to the receiver(s) over a computer network within data processing system.

Appellants show that, because of Nochur's tightly controlled, centralized database approach in order to organize and control documents, such automated sending would not have been desired and thus a person of ordinary skill in the art would not have been motivated to combine such automation with the teachings of Nochur. Nochur teaches use of a single database (Figure 3, element 28) for storing documents, which are only accessible through a database manager 25 (Figure 3). Actions pertaining to such documents are also tightly maintained, again to organize and control. As stated by Nochur at Col. 4, lines 10-22:

> Users can give access to others to edit or annotate items, links, maps, cases, and other computer-based documents and objects. They can create and share instructions, templates, and guidelines relating to the items, the assemblages and links between the items, the maps that contain the items, and the cases that index the maps and other computer-based documents and objects. Details regarding actions or responses relating to items, links, maps, cases, and other computer-based documents and objects can be maintained in computer-based organizers, and computer messages can be generated to remind or alert users about their status and the actions to be taken relating to them.

The only motivation to combine these references to provide automatic sending of selected text comes from Appellants own patent specification, which is improper hindsight analysis. It is error to reconstruct the patentee's claimed invention from the prior art by using the patentee's claims as a "blueprint". When prior art references require selective combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight obtained from the invention itself. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 227 USPQ 543 (Fed. Cir. 1985).

It is also unclear how the teachings of Hager could have been combined with the teachings of Nochur, further evidencing an improper combination of references. Hager teaches that an *entire document* is automatically sent to recipients (Hager Col. 2, lines 20-30). Claim 1 is directed to an automated sending of *selected text* from an electronic book. It is unclear how a teaching of automated sending of entire documents when combined with the teachings of Nochur

somehow transcends such teaching into a teaching of automated sending of selected text from an electronic book, as claimed.

Appellants further show that even when the references are improperly combined, there are missing claimed elements not taught or suggested by the cited references. Specifically with respect to Claim 1, there is no teaching or suggestion of the claimed feature of "A method in a data processing system for *sharing text in an electronic book*, the method comprising: receiving a user input *selecting the text from the electronic book* to form selected text; and *automatically sending the selected text to each electronic book for a designated set of recipients* in response to receiving the user input selecting the text". Claim 1 expressly recites that the selection and sending of text is from/to an electronic book. User input is received in selecting the text from the electronic book. This selected text is then automatically sent to others' electronic book(s), thereby facilitating automated collaboration using electronic book passages and notations. None of the cited references teach or suggest selection of text from an electronic book and automatic sending of such selected text to other electronic book(s). The cited Nochur reference teaches use of a traditional e-mail system, where e-mailed items are placed in a user's mailbox or inbox, to send notes and corresponding attachments (Nochur Col. 10, lines 5-10; Col. 13, line 65 – Col. 66, line 7). The cited Hager reference teaches transmission of an entire document to the intended recipients (Col. 2, lines 27-30). This Hager teaching is different from Claim 1 in at least two aspects – first, it is the entire document that is sent (and not selected text from an electronic book), and secondly, the entire document is sent to a user/recipient (and not to a recipient's electronic book, as claimed).

Thus, even when the references have been improperly combined, there are still claimed features not taught or suggested by the cited references. To establish prima facie obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. MPEP 2143.03. *See also, In re Royka*, 490 F.2d 580 (C.C.P.A. 1974). If the examiner fails to establish a prima facie case, the rejection is improper and will be overturned. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

The Examiner apparently acknowledges that this missing claimed element is not taught or suggested by the cited reference, as the Examiner does not even allege such teaching or suggestion. In rejecting Claim 1, the Examiner states in characterizing the teachings of Nochur:

"The text document or selected text can be sent or forwarded *to other users or recipients*" (emphasis added by Appellants).

The Examiner then states in characterizing the teachings of Hager with regard to Claim 1:

"However, Hager discloses the selected text or document is automatically transmitted *to a designated set of recipients* from the list of recipients (col. 2, lines 25-38 and col. 4, lines 25-37; also see abstract)" (emphasis added by Appellants).

These two references are the only references being used in rejecting Claim 1, and in both instances the Examiner alleges a teaching of sending a document *to a recipient/user.* Claim 1 expressly recites that the selected text is sent to "each electronic book for a designated set of recipients". Thus, the Examiner has failed to establish a prima facie showing of obviousness with respect to Claim 1[1], and the burden has not shifted to Appellants to rebut the obviousness assertion[2]. In addition, as Appellants have otherwise met all statutory requirements with respect to Claim 1, Appellants are entitled to a patent at least with respect to Claim 1[3].

In summary with respect to Claim 1, the references have been improperly combined using hindsight analysis, and even when improperly combined there are missing claimed elements – strongly evidencing non-obviousness. In addition, the Examiner has failed to establish a prima facie showing of obviousness with respect to Claim 1, and thus Claim 1 is shown to have been erroneously rejected. Appellants thus request reversal of the rejection of Claim 1 (and the remaining claims of Group I).

With respect to the claim of Group II, Appellants show error in that none of the cited

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[1] In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). "A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." *In re Bell*, 991 F.2d 781, 782, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (quoting *In re Rinehart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976)).

[2] Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant. *In re Oetiker*, supra.

[3] In the absence of a proper *prima facie* case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent. *See In re Oetiker*, supra.

references teach or suggest the claimed steps of "displaying the sorted text; and *responsive to a user input selecting at least a portion of the sorted text* being displayed, *highlighting portions of the electronic book based on the user input*". In finally rejecting Claim 14, the Examiner cites Nochur's teaching at Col. 5, lines 20-65 for teaching steps of selecting and sorting, and Huffman as teaching the highlighting of selected text. Appellants show that the cited Nocher passage states:

> "The user can select from this library of symbols 101, and also create new symbols by invoking a symbol generator sub-module 103. Indicia to label each selected or created symbol are specified in symbol indicia definition sub-module 105 to create a customized palette of elements 107 relating to the domain of interest. Once a palette 107 has been generated, data and other attributes for the elements in it are defined in attribute definition module 11.
>
> Attribute definition module 11 comprises a document attributes sub-module 111, an element attributes sub-module 113, a link attributes sub-module 115, and an inheritance definition sub-module 117. Document attributes sub-module 111 helps users define various attributes for computer-based documents such as maps, cases, and text documents. A map is a computer-based document that contains items, which are instances of elements from palette 107, and links, which are visual representations of the relationships between various items on a map. Case documents act as folders to index or reference maps and other computer-based documents and objects. Element attributes sub-module 113 defines the attributes of the elements in palette 107. Some attributes can be defined in common across all element categories, while other attributes may be unique to specific elements. Link attributes sub-module 115 is used to define attributes of the various types of links that can be established between items placed on the map documents. Inheritance definition sub-module 117 helps users specify the attributes that can be inherited from case folders by the maps they index, from map documents by the items they contain, and between different items. After various attributes and their inheritance conditions have been defined in its sub-modules, attribute definition module 11 generates attributes entry forms 118 and inheritance dialog boxes 119 that will be used to enter, select, or inherit attributes for items, links, maps, text documents, and case folders.
>
> Database generator module 12 accepts attribute definitions from attribute definition module 11 and creates the database tables 121 that will actually contain the values users enter in various attribute fields.
>
> In report definition module 13, users specify the formats 131 for various reports that they want to create, based on the attributes defined earlier for items, maps, links, cases, and text documents. This module also creates the query dialog boxes 133 users will need to define queries, and **dialog boxes for selection and sorting 135 data for generating various standard and customizable reports**." (emphasis added by Appellants).

Appellants urge that this passage merely describes a general ability for selecting and sorting data for generating reports, but does not teach or otherwise suggest the specific user actions claimed in Claim 14, and in particular does not teach or suggest displaying the sorted text; and responsive to a user input selecting at least a portion of the sorted text being displayed, highlighting portions of the electronic book based on the user input. Per the teachings of Nochur, there is no subsequent user action after the data is selected and sorted. Rather, a report is generated. Because of this, there is no reason or other motivation to include subsequent user steps to any sorted data, including any highlighted functionality described by Huffman. The only suggestion comes from Applicants' own patent specification, which is improper hindsight analysis.

In addition, even when improperly combining the references, there is still no teaching or suggestion, nor has the Examiner alleged any teaching or suggestion of, "displaying the sorted text; and *responsive to a user input selecting at least a portion of the sorted text being displayed*, highlighting portions of the electronic book based on the user input" (emphasis added by Appellants). Thus, a prima facie case of obviousness has not been made with respect to Claim 14, the burden has therefore not shifted to Appellants to rebut an obviousness assertion, and Claim 14 has thus been erroneously rejected because of such failure to establish a prima facie showing of obviousness. Appellants thus request reversal of the rejection of Claim 14.

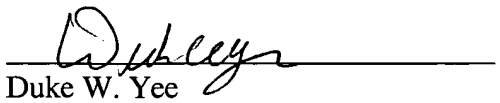
With respect to Claim 21, Appellants urge that none of the cited references teach or suggest "wherein the selection criteria is received with the selected text". In finally rejecting Claim 21, the Examiner merely alleges that Nochur discloses "the sorted text and displaying the sorting text (sorting the data: col. 5, lines 60-65; displaying the data: col. 8, lines 12-24 and col. 9, lines 1-12)". The Examiner makes no allegation of any teaching or suggestion, nor is there in fact any teaching or suggestion, of selection criteria being received with the selected text, as claimed. Thus, a prima facie case of obviousness has not been made with respect to Claim 21, the burden has therefore not shifted to Appellants to rebut an obviousness assertion, and Claim 21 has thus been erroneously rejected because of such failure to establish a prima facie showing of obviousness. Appellants thus request reversal of the rejection of Claim 21.

With respect to Claim 25, Appellants urge that none of the cited references teach or suggest receiving means for receiving selected text from at least one remote electronic book and sorting means for sorting the selected text (received from the remote electronic book). In rejecting Claim 25, the Examiner relies on the reasoning given in rejecting Claim 14. In rejecting Glaim 14, the

Examiner asserts that Nochur discloses sorting data from the at least one remote electronic book and displaying the data, but provides no supporting citation in the reference of where such disclosure exists. Applicants have reviewed the cited Nochur reference in detail, and the only sorting functionality that could be found is described at Nochur Col. 5, lines 62-65. There, Nochur merely states "This module also creates the query dialog boxes 133 users will need to define queries, and dialog boxes for selection and sorting 135 data for generating various standard and customized reports". This sorting is not with respect to selected data from a *remote* electronic book, but rather the sorting of locally created data. The ability to sort selected data from a remote electronic book further facilitates electronic book data collaboration by allowing sorting by a device (a data processing system) other than the remote electronic book. As none of the cited references teach such capability, it is shown that Claim 25 has been erroneously rejected by the Examiner as all claimed features are not taught or suggested by the cited references. Applicants thus request reversal of the rejection of Claim 25.

In conclusion, the cited references have been improperly combined using hindsight analysis, and even when improperly combined there are still missing claimed elements not taught or suggested by the cited references. In addition, the Examiner has failed to properly establish a prima facie showing of obviousness. Applicants thus request that the Board reverse the rejection of Claim 1-14 and 16-27 as being erroneously rejected.

Respectfully Submitted,



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APPENDIX OF CLAIMS

The text of the claims involved in the appeal are:

1. A method in a data processing system for sharing text in an electronic book, the method comprising:

receiving a user input selecting the text from the electronic book to form selected text; and

automatically sending the selected text to each electronic book for a designated set of recipients in response to receiving the user input selecting the text.

2. The method of claim 1 further comprising:

displaying a list wherein the designated set of recipients is selected from the list.

3. The method of claim 1, wherein the selected text is highlighted text.

4. The method of claim 3, wherein the highlighted text is text in a different color from unselected text, bolded text, and text with a different font type from unselected text.

5. The method of claim 1 further comprising:

storing the highlighted text in a data structure.

6. The method of claim 5, wherein data structure is a download file.

7. The method of claim 1, wherein the text is a notated passage of text in the electronic book.

8. The method of claim 1, wherein the text is a highlighted passage of text in the electronic book.

9. The method of claim 1, wherein the sending step sends the highlighted text to the designated set of recipients using a communications link.

10. The method of claim 1, wherein the sending step sends the highlighted text to the designated set of recipients in an electronic mail message.

11. The method of claim 10, wherein the highlighted text is located in a body of the electronic mail message.

12. The method of claim 10, wherein the highlighted text is located in an attachment attached to the electronic mail message.

13. A method in a data processing system for sharing highlighted text in an electronic book, the method comprising:

receiving a first user input selecting the highlighted text from the electronic book;

displaying a list of recipients;

receiving a second user input selecting a designated set of recipients from the list

recipients; and

sending the highlighted text to each electronic book for the designated set of recipients.

14. A method in a data processing system for sharing text in an electronic book, the method comprising:

receiving selected text from at least one remote electronic book through a communications link to the data processing system;

sorting the selected text from the at least one remote electronic book using a selection criteria to form sorted text;

displaying the sorted text; and

responsive to a user input selecting at least a portion of the sorted text being displayed, highlighting portions of the electronic book based on the user input.

16. The method of claim 14, wherein selection criteria is used to sort and group the selected text.

17. The method of claim 14, wherein the selection criteria includes at least one of popularity, name of a user originating text within the selected text, and subject matter of portions of text within the selected text.

18. The method of claim 14, wherein the selected text includes passages from the at least one remote electronic book.

19. The method of claim 14, wherein the selected text includes annotations made by a user.

20. The method of claim 14, wherein the selection criteria is received from a user input.

21. The method of claim 14, wherein the selection criteria is received with the selected text.

22. The method of claim 14, wherein the sorted text excludes a portion of the selected text.

23. A data processing system for sharing text in an electronic book, the data processing system comprising:

receiving means for receiving a user input selecting the text from the electronic book; and

sending means for automatically sending the highlighted text to each electronic book for the designated set of recipients in response to receiving the user input selecting the text.

24. A data processing system for sharing highlighted text in an electronic book, the data processing system comprising:

receiving means for receiving a first user input selecting the highlighted text from the electronic book;

displaying means for displaying a list of recipients;

receiving means for receiving a second user input selecting a designated set of recipients from the list of recipients; and

sending means for sending the highlighted text to each electronic book for the designated set of recipients.

25. A data processing system for sharing text in an electronic book, a data processing system comprising:

receiving means for receiving selected text from at least one remote electronic book through a communications link to the data processing system;

receiving means for receiving selection criteria for the selected text;

sorting means for sorting the selected text with respect to the selection criteria to form sorted text; and

displaying means for displaying the sorted text.

26. A data processing system comprising:

a bus system;

a communications unit connected to the bus system;

a memory connected to the bus system, wherein the memory includes as set of instructions; and

a processing unit connected to the bus system, wherein the processing unit executes the set of instructions to receive a user input selecting the text from the electronic book; and automatically send the highlighted text to each electronic book for the designated set of recipients in response to receiving the user input selecting the text.

27. A computer program product in a computer readable medium for sharing highlighted text in an electronic book, the computer program product comprising:

first instructions for receiving a user input selecting the text from the electronic book; and

second instructions for automatically sending the highlighted text to each electronic book for the designated set of recipients in response to receiving the user input selecting the text.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Chastain et al.**

Serial No.: **09/900,551**

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§ Examiner: **Ly, Anh**
§
§ Attorney Docket No.: **RSW920010058US1**
§

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CUSTOMER NUMBER

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By: Rebecca Clayton
Rebecca Clayton

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Sir:
ENCLOSED HEREWITH:

- Appellant's Brief (in triplicate) (37 C.F.R. 1.192); and
- Our return postcard.

A fee of $330.00 is required for filing an Appellant's Brief. Please charge this fee to IBM Corporation Deposit Account No. 09-0461. No additional fees are believed to be necessary. If, however, any additional fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0461. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0461.

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